

**REMARKS**

Claims 1-13 are pending. The Office Action dated September 06, 2006 for this Application has been carefully considered. The above amendments and the following remarks are presented in a sincere attempt to place this Application in a condition for allowance. Claims 9 and 12 have been cancelled in this Response. Reconsideration and allowance are respectfully requested in light of the above amendments and following remarks for those Claims not currently considered in a condition for allowance.

Claims 1-13 stand rejected under 35 U.S.C. §102(e) by U.S. Patent No. 6,757,804 to Jochemsen et al. ("Jochemsen"). According to the MPEP §2131, in order to establish a *prima facie* case for a §102(e) rejection the Claim must be fully anticipated by the reference. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Applicant respectfully submits that the rejection is traversed because Examiner has failed to establish *prima facie* anticipation for each and every element of the remaining Claims.

The Examiner has interpreted Jochemsen as disclosing "an agent, wherein the agent is at least: configured to operate while the computer system is at least idle (column 2 lines 58-67, Jochemsen); configured to defragment the plurality of file fragments (column 2, lines 1-10, Jochemsen); and configured to delete the record of at least locations of the plurality of file fragments (column 2 lines 58-67 and column 3 lines 23-45)." (Page 3 of the Office Action).

The Examiner cites column 2, lines 1-10, of Jochemsen as teaching defragmentation. However, the actual text is as follows:

“According to the present invention in a second aspect, there is provided a system arranged for *reducing fragmentation* of a digital storage device, characterized by the system comprising means for determining that a plurality of files is available for deletion; means for selecting one of the files; and means for deleting the selected file and not deleting another of the files.

It has been realized that with digital storage devices annotating a plurality of files for deletion, there is an efficient opportunity to *reduce fragmentation* by selective deletion.” (Emphasis added)

Jochemsens teaches deletion and writing in a manner to reduce fragmentation of a file *before* the file is written to a disk. Conventional defragmentation takes place *after* a series of files have been written to a disk. In Jochemsens, no individual clusters are moved or rearranged to form more contiguous units. Instead, Jochemsens is essentially a specialized delete function in which files to be deleted are analyzed along with the fragmented free space and the size of a write file in order to delete only those files necessary to place the write file on the disk in a manner that reduces the overall fragmentation of the disk. (Col. 2, lines 51-58). A user implementing the teachings of Jochemsens may still have to actively defragment their disk in order to optimize performance.

In addition, Claim 1 includes an agent “at least: configured to operate while the computer system is at least idle.” The Examiner cites column 2 lines 58-67 for support of anticipation of this element.

“To maintain a record of the file, a file manager entry is generated (step 108) in the file manager 30. The file may be annotated for deletion at this stage or it may be so annotated later (step 110). Annotation is typically by a marker flag on the file manager entry for the file. If it is to be annotated then the corresponding file manager entry is annotated accordingly (step 112). A file

may be annotated for deletion after a certain period of time, or may be user selected for deletion, for instance by being placed in a recycle bin or the like (in a WINDOWS [sic end of citation])”

The teachings of Jochemsen are directed to marking a file for deletion and whether the file is marked immediately or at a later point in time. The Applicant could not find any relevance to the elements in the claim in which the agent is “at least configured to operate while the computer system is at least idle.” In other places, Jochemsen only teaches the reduction of fragmentation during an instructed write operation or an instruction to clear free space. (Col 3, lines 5-7). Therefore the teachings of Jochemsen take place during periods of computer activity in which the computer system is instructed to *actively* write a file or clear a space. The Applicant could not find any teachings indicating the identification or occurrence of a period of idle time in the Jochemsen reference.

Due to at least these two elements not being taught nor implied, neither expressly nor inherently by the reference, the Applicant respectfully requests that the Examiner reconsider and withdraw this §102(e) rejection. In lieu of this, the Applicant requests that the Examiner specifically point out and identify teachings or implications in the reference showing the anticipation of these two elements.

Additionally, independent Claims 5, 8, 10, 11, and 13, include aspects of these two elements and the rejection against these independent Claims should be withdrawn for at least the same reasons as provided for independent Claim 1. Dependent Claims 2-4, 6, and 7, depend upon and further limit independent Claims 1 and 5. Hence, for at least the aforementioned reasons, these dependent Claims would be deemed to be in condition for allowance. Therefore the Applicant also respectfully requests that the rejections of the dependent Claims 2-4, 6, and 7, be withdrawn.

The Applicant has now made an earnest attempt to place this Application in a condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests full allowance of Claims 1-8, 10, 11, and 13.

The Applicant does not believe that any fees are due; however, in the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-0605 of CARR LLP.

Should the Examiner deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

CARR LLP

Dated: December 6, 2006  
CARR LLP  
670 Founders Square  
900 Jackson Street  
Dallas, Texas 75202  
Telephone: (214) 760-3030  
Fax: (214) 760-3003

/Gregory W. Carr/  
Gregory W. Carr  
Reg. No. 31,093